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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/531,312	09/29/2005	Moshe Cohen Amar	044514-0023	6247
31824 7590 05/11/2007 MCDERMOTT WILL & EMERY LLP 18191 VON KARMAN AVE. SUITE 500 IRVINE, CA 92612-7108			EXAMINER REIS, TRAVIS M	
			ART UNIT 2859	PAPER NUMBER
			MAIL DATE 05/11/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/531,312		AMAR, MOSHE COHEN	
	<b>Examiner</b>		<b>Art Unit</b>	
	Travis M. Reis		2859	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                        |                                                                   |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20070208</u>                                                  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 & 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al. (U.S. Patent 4549355).

With reference to claim 1, Sauer et al. disclose a precision dendrometer (10) using extension measurement bands (R1—R4) as resistances for a Wheatstone Bridge type circuit (Figure 6), said dendrometer consisting of a sensor holder (27) that serves as a part for securing the dendrometer to a plant (12), an electronic interface (Figure 6) connecting the sensor holder to data collector equipment (101) and a sensor (14); wherein said sensor comprises a toroidal/cylindrical body (Figure 1) coupled to a first end of a sheet (18) (Figure 1), (wherein a "sheet" is defined in Webster's Dictionary as "a relatively thin rectangular slab of metal" and therefore segment 18 is considered, in a broad sense, a sheet) on which the extension measurement bands are mounted (Figure 2); the second end of the sheet (20) contacting the plant, and wherein said sensor is configured to determine dimensional variation of the plant according to pressure exerted by the plant (col. 2 lines 13-16).

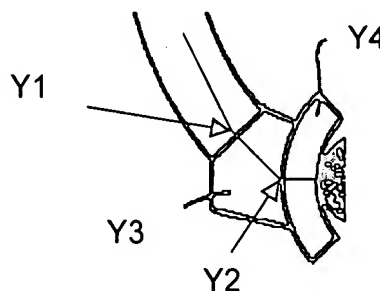
Sauer et al. does not disclose the sheet is made of aluminum. However, the particular type of material used to make the sheet, absent any criticality, is only considered to be the use of a "preferred" or "optimum" material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of

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Applicant's apparatus, i.e., suitability for the intended use of Applicant's apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See In re Leshin, 125 USPQ 416 (CCPA 1960 ).

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the sheet disclosed by Sauer et al. out of aluminum in order to resist corrosion.

With reference to claim 2, Sauer et al. disclose that the end of the aluminum sheet in contact with the plant has a double bend (Y1, Y2, see below) with convergent side edges, forming a substantially angular (Y3) and rounded end (Y4).



3. Claims 3 & 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sauer et al. in view of Kutsay (U.S. Patent 2873341).

Sauer et al. discloses all of the instant claimed invention as stated above in the rejection of claims 1 & 2, including an adjusting and securing rod (25) acting as a foot being connected (27) with the sensor holder.

Sauer et al. does not disclose wherein the sensor holder has a part with a cylindrical cavity where the cylindrical body of the sensor is housed and held.

Kutsay discloses a strain gauge device (Figure 1) with a sensor holder (10) with a cylindrical cavity (11) configured to hold a sensor (16) (Figure 1) in place. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the cylindrical cavity disclosed by Kutsay to the sensor holder disclosed by Sauer et al. in

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order that the sensor holder and the sensor disclosed by Sauer et al. are more securely seated together than merely stuck end to end.

Sauer et al. does not disclose a plurality of rods. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a plurality of rods, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add a second rod next to the first rod disclosed by Sauer et al. in order to more stably secure the dendrometer to the plant.

With reference to claim 4, Sauer et al. does not disclose said rods are made of a material that has a zero coefficient of expansion. However, the particular type of material used to make the sheet and rods, absent any criticality, is only considered to be the use of a " preferred " or " optimum " material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant's apparatus, i.e., suitability for the intended use of Applicant's apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See *In re Leshin*, 125 USPQ 416 (CCPA 1960 ). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the rods disclosed by Sauer et al. with a zero coefficient of expansion in order that the rod threads do not expand and jam up in high temperatures (i.e. desert), and instead allow for adjustment of the rod at any temperature.

***Response to Arguments***

4. In response to applicant's arguments that Sauer does not disclose using aluminum to contrast the dendrometer, including the transducer member; these arguments have been fully considered but they are not persuasive since it is an obvious material design choice to construct the dendrometer out of aluminum, absent any criticality, as detailed above in paragraph 2.
5. In response to applicant's arguments that the transducer member is not relatively thin; these arguments have been fully considered but they are not persuasive since relative to the majority of the other components of the dendrometer, the transducer member is smaller and therefore is considered "relatively thin".
6. In response to applicant's arguments that the transducer member is not rectangular; these arguments have been fully considered but they are not persuasive since Figures 1 & 2 of Sauer et al. shows the member has corners and hence a rectangular cross-section from a perpendicular direction.
7. In response to applicant's arguments that does not disclose a cylindrical body; these arguments have been fully considered but they are not persuasive since Figure 1 shows that the sensor component 14 is toroidal/cylindrical, as detailed above in paragraph 2.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will

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be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

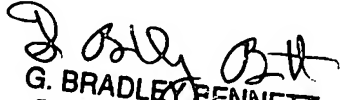
9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Travis M Reis  
Examiner  
Art Unit 2859

tmr  
May 3, 2007

  
G. BRADLEY BENNETT  
PRIMARY EXAMINER  
5.7.7  
A.U. 2859